a business, and by lawful competition injure the trade of another. *Montgomery, Ward & Co. v. S. Dakota, etc., Ass'n.*, 150 Fed. 413. But it cannot be said that labor unions have a right to intimate to a third party that they will withdraw their trade from him in the future and persuade others to do the same unless he stops dealing with another; and therefore this interference with a person's right to an open market amounts to a legal wrong, even though it be effected by means both peaceful and seemingly lawful. *Plant v. Woods*, 176 Mass. 492.

CONTRACTS—ILLEGALITY—ENFORCEMENT.—SIRKIN v. FOURTEENTH ST. STORE, 108 N. Y. SUPP. 830.—*Held*, that a contract by which plaintiff sells goods to defendant through its purchasing agent, the inducing cause for placing the order with the plaintiff being plaintiff's agreement, unknown to defendant, to pay the agent five per cent of the purchase price of goods ordered by him, is tainted by such agreement, so that on grounds of public policy an action for the purchase price cannot be maintained. Scott, J., and Patterson, P. J., *dissenting*.

The better doctrine is that any such plaintiff may recover who can establish his case without referring to the illegal contract. *Chitty on Contracts*, 657; *Armstrong v. American Exch. Nat. Bank*, 133 U. S. 433. And a New York case, analogous to the above, maintains that the mere fact that one of the parties has violated a penal statute in the approach to the contract does not prevent a court from enforcing payment under it. *Ballin v. Hein*, 101 N. Y. Supp. 38. Where both contracts were made at the same time and are still executory, the contrary is held. *Stanton v. Sturgis*, 140 Fed. 789. If in the same contract the legal part is severable from the illegal, the good will be enforced. *Fishell v. Gray*, 60 N. J. L. 5. So, though a contract for an exclusive agency is illegal, the vendor may recover for his bill of goods sold under it. *Packard v. Byrd*, 73 S. C. 1; *Annheuser-Busch Brewing Asso. v. Houck*, 27 S. W. (Tex.) 692. *Arnot v. Pittston & E. Coal Co.*, 68 N. Y. 558, *contra*. The New York Court will never attempt such a separation in behalf of a wrong-doer. *Saratoga County Bank v. King*, 44 N. Y. 87.

CONTRACTS—MUTUALITY—FURNISHING MATERIALS.—LIMA LOCOMOTIVE & MACH. CO. v. NAT. STEEL CASTINGS CO., 155 FED. 77.—*Held*, that an agreement by the defendant with the plaintiff, in a well established business, to furnish all the plaintiff's requirements in steel castings for the remainder of the year, at prices mentioned, is not void for want of mutuality.

This holding has the support of the more modern decisions where one party is impliedly bound to buy *all* of his requirements of the other. *Minn. Mill. Co. v. Goodnow*, 40 Minn. 497; *Lewis v. Atlas Life Ins. Co.*, 61 Mo. 534; *McCartnet, et al., v. Glassford*, 1 Wash. 579; *Contra, Campbell v. Lambert*, 36 Ia. 35; *Schlitz v. Komp*, 118 Ill. App. 566. Contracts for all one may *require* are valid. *Dailey v. Canning Co.*, 128 Mich. 591; *Wells v. Alexander*, 130 N. Y. 642; and for all one may make or produce. *Herrick v. Wardwell*, 58 Ohio S. R. 294; *McCall v. Icks*, 107 Wis. 232, *contra, Lowe v. Ayer-Lord Tie Co.*, 29 Ky. L. R. 1302; *Thayer v. Burchard*, 99 Mass. 508. They are valid also in some cases where the contract depends upon a contingency. *Los Angeles Traction Co. v. Wiltshire*, 135 Cal. 654; *Boyd v. Brown*, 47 W. Va. 238. But agreements to furnish all that one may want or order are invalid. *McCaw v. Felder, et al.*, 115 Ga. 408; *Bailey v. Austrian*, 19 Minn. 535; *Drake v. Vorse*, 52 Ia. 417.

CONTRACTS—SUBSTANTIAL PERFORMANCE—RECOVERY.—FLAGG v. SCHOENLEBEN, 142 N. Y. SUPP. 1004.—*Held*, that proof of a substantial performance

of a building contract justifies a recovery for the contract price less the value of the work omitted. MacLean, J., *dissenting.*

Performance by the common law rule demands a strict adherence to the terms of the contract in order to constitute a discharge. *Leonard v. Dyer,* 26 Conn. 172; *Glacius v. Black,* 50 N. Y. 145. A recovery may be had in equity, however, where there is proof of a substantial performance. *Heckmann v. Pinkey,* 81 N. Y. 211; *Page v. Greeley,* 75 Ill. 400. The latter rule has been adopted in the courts of law in the case of building contracts, it being laid down that the contractor must act in good faith. *Nolan v. Whitney,* 88 N. Y. 648. And the omission must be of some inconsiderable details of construction which do not enter into the substance of the contract. *Bush v. Jones,* 144 Fed. 942; *Fauble v. Davis,* 48 Ia. 462. This is a question of fact for the trial court. *Rose v. O'Riley,* 111 Mass. 57; *Clark v. Collier,* 100 Cal. 256. And wherever the doctrine is recognized the *onus probandi* is on the plaintiff. *Timmer v. Jourgensen,* 144 N. Y. 650. And the amount recoverable is the contract price less full compensation for all defects. *Gleason v. Smith,* 9 Mass. 484; *Katz v. Bedford,* 77 Cal. 319.

CORPORATIONS—SALE OF STOCK—FIDUCIARY RELATIONSHIP—RESCISSION.—STERN V. STERN, 107 N. Y. SUPP. 900.—One in a trust relationship with another was induced by the fraudulent representations of that other to purchase stock in a certain company. Plaintiff, the defendant's son, bought stock in a mining and smelting company at request of his father, who, wilfully misstating facts as to the prospects and manufacturing ability of the said company—saying that the company could produce 60,000 tons of pig iron yearly, when he knew it could not—prevailed upon his son to purchase stock in the said company.—*Held,* that such violation of trust relationship was fraud, and that, together with a tender back of the stock, with a demand for consideration paid, were grounds for an action on the theory of rescission. Ingraham and Scott, J.J., *dissenting.*

The intentional misrepresentation of a material fact constitutes fraud. *Edelman v. Latchan,* 180 Pa. 419; *Stark v. Soule,* 9 N. Y. St. Rep. 555; *French v. Ryan,* 104 Mich. 625. The English rule is the same. *Derry v. Peake,* L. R. Cepp. Cas., 337. When parties deal in trust and confidence, the omission of one of the parties to an agreement to make inquiries as to the truth of the facts stated by that other, cannot be implied to him as negligence, and is no defense in an action of fraud. *Mead v. Bunn,* 32 N. Y. 275; *Gwain v. Masterson,* 152 Ind. 157; *Watson v. Brown,* 113 Iowa 308; *Hunt v. Barker,* 22 R. I. 18. In an equitable action to rescind a contract because of fraud, it is sufficient for the plaintiff to offer in his complaint to restore what he has received, where he has acted promptly upon discovery of the fraud. *Rohrof v. Schutte,* 154 Ind. 183.

FALSE IMPRISONMENT—PROBABLE CAUSE—ABANDONMENT OF PROSECUTION.—SANDERS V. DAVIS, 44 So. 979 (ALA.).—*Held,* that want of probable cause for plaintiff's arrest cannot be inferred in an action for false imprisonment, from the failure or abandonment of the prosecution.

Although this holding of the court is the established rule in actions for malicious prosecution, *Staub v. Van Bethuysen,* 36 La. Ann. 467; *Cooley on Torts,* page 179; in actions for false imprisonment it is decidedly the exception. In such cases, voluntary dismissal of proceedings on which plaintiff was arrested, *Beebe v. De Baun,* 8 Ark. 510; or his discharge from arrest, *Rosenkranz v. Hass,* 20 N. Y. Supp. 880; or his acquittal after trial